

**SETH E. CHASTAIN**, WSBA# 43066  
 Email: *sechastain@levy-law.com*  
**LEVY | VON BECK | COMSTOCK, P.S.**  
 1200 5<sup>th</sup> Ave., Ste. 1850  
 Seattle, Washington 98101  
 Telephone: (206) 626-5444  
 Facsimile: (206)-626-5444  
 Attorney for Use Plaintiff, Rexel USA, Inc. dba Platt Electric Supply

**UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA for the use  
 of REXEL USA, INC. a Delaware corporation  
 dba PLATT ELECTRIC SUPPLY

Plaintiff,

v.

KIRLIN BUILDERS, LLC, a foreign entity  
 doing business in Washington, Contractor's  
 Registration No. KIRLIBL821OD; LIBERTY  
 MUTUAL INSURANCE COMPANY, Bond  
 No. 01716785; FEDERAL INSURANCE  
 COMPANY, Bond No. 82156156; CALIBER  
 ELECTRIC, INC. a Washington corporation,  
 Contractor's Registration No.  
 CALIBEI034LF,

Defendants.

Civil Action No.:

**COMPLAINT FOR FORECLOSURE OF  
 MILLER ACT CLAIM, BREACH OF  
 CONTRACT, AND UNJUST  
 ENRICHMENT**

COMES NOW Plaintiff, United States of America for the use of Rexel USA, Inc. dba  
 Platt Electric Supply ("Platt Electric"), and for its claims against the defendants, Kirlin Builders,  
 LLC, Liberty Mutual Insurance Company, Federal Insurance Company, and Caliber Electric,  
 Inc., states as follows:

**PARTIES**

1. Platt Electric, the Use Plaintiff in this action, is a corporation duly organized and existing under the laws of the State of Delaware with its principal office located at 10605 SW Allen Blvd., Beaverton, OR 97005.

2. Defendant Kirlin Builders, LLC (“Kirlin”) is a foreign limited liability company transacting business in the State of Washington. Kirlin is registered as a construction contractor in Washington under contractor registration number KIRLIBL821OD.

3. Defendant Liberty Mutual Insurance Company, (hereinafter “Liberty Mutual”) is a Massachusetts corporation, with its principal offices located at 175 Berkeley Street, Boston, MA. Liberty Mutual is a Surety on the Payment and Performance Bonds furnished pursuant to the Miller Act, 40 U.S.C. §§ 3131 *et seq.*, for the project involved in this action.

4. Defendant Federal Insurance Company (“Federal Insurance”) is an Indiana corporation, with its principal offices located at 15 Mountain View Road, Warren, NJ. Federal Insurance is a Surety on the Payment and Performance Bonds furnished pursuant to the Miller Act, 40 U.S.C. §§ 3131 *et seq.*, for the project involved in this action.

5. Defendant Caliber Electric, Inc. (“Caliber”) is a Washington corporation. Caliber is registered as an electrical contractor in Washington under contractor registration number CALIBEI034LF.

**JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction of this action under 40 U.S.C. §§ 3131 *et seq.* and 28 U.S.C. § 1367.

1  
2 6. Venue is proper in this Court pursuant to 40 U.S.C. § 3133(b)(3) because the  
3 contract at issue, number W912DY-12-D-0012-0024, is for construction work at the Naval  
4 Hospital (hereinafter “Project”) located in Bremerton, Washington.

5 **FACTS**

6 7. Upon information and belief, Kirlin entered into a written contract with the  
7 United States of America acting by and through the US Army Corp of Engineers on or around  
8 September 30, 2016, for construction work at the Project, located at 1 Boone Road, Bremerton,  
9 Washington 98312. Kirlin was the prime contractor on the project.

10 8. On or around September 30, 2016, Kirlin duly executed and delivered to the  
11 United States of America a payment and performance bond for the protection of all persons  
12 supplying labor and material for the prosecution of the work provided for in said contract. Both  
13 Liberty Mutual and Federal Insurance were named as sureties for the bond. Upon information  
14 and belief, the bond was executed in accordance with the provisions of 40 U.S.C. § 3131 (*see*  
15 Payment Bond attached as **Exhibit A**). Platt Electric furnished materials to Caliber, a  
16 subcontractor having a direct relationship with the general contractor or principal on the Project.

17 9. On or about May 31, 2017, Caliber began to purchase certain electrical materials  
18 and equipment from Platt Electric for the Project pursuant to a Credit Application Agreement  
19 that Caliber executed by Larry Bock and Kerry D. Schubert, authorized representatives of  
20 Caliber, on or about July 1, 1997 (*see* Credit Application attached as **Exhibit B**).

21 10. On or about May 31, 2017, Platt Electric began to ship the electrical materials  
22 and equipment to the Project as requested by Caliber.

23 11. On or about April 3, 2019, Platt Electric completed its furnishing of materials  
24 and equipment to the Project and provided timely invoices to Caliber in the total amount of  
25

1 \$214,847.54. All materials and equipment were provided in a timely manner and consistent  
2 with the requests by Caliber.  
3

4 12. Caliber has issued partial payments in the amount of \$175,009.28, leaving a  
5 principal balance of \$39,838.26. Despite repeated demands for payment, Caliber has refused  
6 or is unable to issue the remaining balance to Platt Electric's invoices.

7 **MILLER ACT CLAIM**

8 13. Platt Electric incorporates herein the statements contained in paragraphs 1-12,  
9 above, of this Complaint.

10 14. The date on which Platt Electric last supplied materials and equipment to Caliber  
11 for the Project was April 3, 2019.

12 15. On May 7, 2019, within 90 days of the date Platt Electric last supplied materials  
13 and equipment to Caliber for the Project, Platt Electric served written notice upon Federal  
14 Insurance of Platt Electric's claim in the principal amount of \$39,838.26. On May 10, 2019,  
15 within 90 days of the date Platt Electric last supplied materials and equipment to Caliber for the  
16 Project, Platt Electric served written notice upon Kirlin, the prime contractor, and Liberty  
17 Mutual of Platt Electric's claim in the principal amount of \$39,838.26 (*see* Notice of Claim  
18 Against Bond and Affidavit of Service attached as **Exhibits C1 and C2**).  
19

20 15. Notwithstanding Platt Electric's subsequent demands for payment from Caliber,  
21 over 90 days have elapsed since Platt Electric last supplied materials and equipment to the  
22 Project, and Platt Electric has not been paid therefor.

23 18. Defendants Liberty Mutual and Federal Insurance, as Sureties on the Payment  
24 Bond furnished by Kirlin for the Project, are therefore liable to Platt Electric for the principal  
25 amount of \$39,838.26 plus prejudgment interest.

**CLAIM FOR BREACH OF CONTRACT**

19. Platt Electric incorporates herein the statements contained in paragraphs 1-18 of this Complaint.

20. Platt Electric supplied materials and equipment for the Project under an agreement with Caliber pursuant to which Caliber still owes the principal balance of \$39,838.26. Caliber is therefore in breach of its contract for the purchase of materials and equipment from Platt Electric. Under the terms of Platt Electric's Credit Agreement with Caliber, Caliber is liable to Platt Electric not only for the principal amount owed, but for prejudgment interest, and Platt Electric's reasonable attorneys' fees and costs.

**CLAIM FOR UNJUST ENRICHMENT (CALIBER)**

21. Platt Electric incorporates herein the statements contained in paragraphs 1-20 of this Complaint.

22. Platt Electric supplied materials and equipment to Caliber for the Project without payment therefor, thereby conferring benefits upon Caliber. Those benefits were accepted and retained by Caliber under such circumstances that Caliber has been unjustly enriched, and it would be inequitable for Caliber to continue to retain same without payment to Platt Electric for the value thereof.

23. Caliber has been unjustly enriched in the principal amount of \$39,838.26, for which it is liable to Platt Electric.

24. In the alternative to Platt Electric's claim for breach of contract, and in the event that the contract is determined to be void or unenforceable, Platt Electric is entitled to just, fair and reasonable compensation for the materials and equipment furnished by Platt Electric to

Caliber, plus interest, reasonable attorney's fees, and costs under the theory of unjust enrichment.

### **CLAIM FOR UNJUST ENRICHMENT (KIRLIN)**

23. Platt Electric incorporates herein the statements contained in paragraphs 1-24 of this Complaint.

24. Platt Electric supplied materials and equipment to Caliber, a subcontractor of Kirlin for the Project without payment therefor, thereby conferring benefits upon Kirlin. Those benefits were accepted and retained by Kirlin under such circumstances that Kirlin has been unjustly enriched, and it would be inequitable for Kirlin to continue to retain same without payment to Platt Electric for the value thereof.

24. Kirlin has been unjustly enriched in the principal amount of \$39,838.26, for which it is liable to Platt Electric.

25. In the alternative to Platt Electric's claim for breach of contract against Caliber, and in the event that the contract is determined to be void and unenforceable, Platt Electric is entitled to just, fair and reasonable compensation for the materials and equipment furnished by Platt Electric to Kirlin's subcontractor, plus interest, reasonable attorney's fees, and costs under the theory of unjust enrichment.

### **PRAYER FOR RELIEF**

WHEREFORE, Use Plaintiff, Platt Electric, respectfully demands judgment as follows:

- a. Judgment against Liberty Mutual Insurance Company on Platt Electric's Miller Act Claim, in the principal amount of \$39,838.26, plus prejudgment interest, court costs and statutory attorney's fees.
- b. Judgment against Federal Insurance Company on Platt Electric's Miller Act Claim, in the principal amount of \$39,838.26, plus prejudgment interest, court costs and statutory attorney's fees.

- 1
- 2 c. Judgment against defendant Caliber Electric, Inc. on Platt Electric's Claim for
- 3 Breach of Contract in the principal amount of \$39,838.26, plus interest at the
- 4 contract rate of 18% per annum, reasonable attorney's fees, and court costs;
- 5 d. In the alternative to Platt Electric's Claim for Breach of Contract and judgment
- 6 against Caliber Electric, Inc., judgment against defendant Caliber Electric, Inc.
- 7 on Platt Electric's Claim for Unjust Enrichment in the principal amount of
- 8 \$39,838.26, plus interest, reasonable attorney's fees, and court costs;
- 9 e. In the alternative to Platt Electric's Claim for Breach of Contract against Caliber
- 10 Electric, Inc., judgment against defendant Kirlin Builders, LLC, on Platt
- 11 Electric's Claim for Unjust Enrichment in the principal amount of \$39,838.26,
- 12 plus interest, reasonable attorney's fees, and court costs;
- 13 f. Such other and further relief as the Court deems just and proper.

14 DATED this 19<sup>th</sup> day of February 2020.

15 LEVY VON BECK COMSTOCK, P.S.

16 *s/ Seth E. Chastain*

17 *s/ Christian J. Lawler*

18 Seth E. Chastain, WSBA# 43066

19 Christian J. Lawler, WSBA # 54033

20 Telephone: (206) 626-5444

21 *sechastain@levy-law.com*

22 *christian@levy-law.com*

23 Of Attorneys for Use Plaintiff,

24 Rexel USA, Inc. dba Platt Electric, Inc.